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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 JEROME TALLEY,

8 Petitioner,

9 v.

10 SUPERINTENDENT OF THE CLALLAM  
BAY CORRECTIONAL CENTER,

11 Respondent.

Case No. C17-1586 TSZ-JPD

ORDER AFFIRMING JUDGE  
DONOHUE'S DENIAL OF MOTION TO  
RECUSE

12 THIS MATTER comes before the Court on Petitioner's Motion and Declaration of Bias  
13 and Prejudice, in which he seeks the recusal of U.S. Magistrate Judge James P. Donohue from this  
14 case. Dkt. #46. On February 27, 2018, Judge Donohue declined to recuse himself. Dkt. #50. In  
15 accordance with the Local Rules of this District, the matter was then referred to the Undersigned  
16 for review. LCR 3(e).

17 Petitioner asserts that Judge Donohue should recuse himself because he made "an  
18 erroneous" decision on a habeas petition in 2015. Dkts. #46 at 2 and #49 at 4-5. Pursuant to 28  
19 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any proceeding in which  
20 his impartiality "might reasonably be questioned." Federal judges also shall disqualify themselves  
21 in circumstances where they have a personal bias or prejudice concerning a party or personal  
22 knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C. § 455(b)(1).

1 Under both 28 U.S.C. § 144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate  
2 if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality  
3 might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th  
4 Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not  
5 whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United*  
6 *States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540  
7 (1994), the United States Supreme Court further explained the narrow basis for recusal:

8 [J]udicial rulings alone almost never constitute a valid basis for a bias or  
9 partiality motion. . . . [O]pinions formed by the judge on the basis of facts  
10 introduced or events occurring in the course of the current proceedings, or of  
11 prior proceedings, do not constitute a basis for a bias or partiality motion  
12 unless they display a deep seated favoritism or antagonism that would make  
13 fair judgment impossible. Thus, judicial remarks during the course of a trial  
14 that are critical or disapproving of, or even hostile to, counsel, the parties, or  
15 their cases, ordinarily do not support a bias or partiality challenge.

16 *Id.* at 555.

17 In the instant motion, the only basis for the recusal request asserted by Petitioner is a  
18 negative ruling made three years ago. Dkts. #46 at 2 and #49 at 4-5. No facts even suggesting  
19 bias or prejudice have been asserted. Therefore, the Court finds no evidence upon which to  
20 reasonably question Judge Donohue’s impartiality and AFFIRMS his denial of Petitioner’s request  
21 that he recuse himself. The Clerk SHALL provide copies of this Order to Petitioner, all counsel  
22 of record, and to Judge Donohue.

23 DATED this 2 day of March, 2018.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE